



TNRCC TECHNICAL GUIDANCE

PRODUCT / PETROLEUM STORAGE TANKS

SUBJECT: **Real Estate Considerations for LPST Cleanups**

The strong regulatory emphasis placed on the cleanup of environmental contamination and the frequency of leaking product storage tanks (LPST) has peaked the concern of those in the real estate market with respect to the potential purchase of contaminated properties. This is justifiable since no one desires to be liable for the costly cleanup of environmental contamination caused by others.

As a result, prior to the closing of real estate transactions for commercial properties, phase I environmental site assessments are commonly conducted to identify potential environmental contamination. The intent of this publication is to explain the policy of the Texas Natural Resource Conservation Commission (TNRCC) with regard to the cleanup of contamination originating from leaking petroleum storage tanks in order to alleviate some of the concerns of those in the real estate market.

Laws and regulations regarding the PST program are found in Chapter 26, Subchapter I of the Texas Water Code and Title 30, Texas Administrative Code, Chapter 334, respectively. These laws and regulations apply to the current owner and operator of the tank system or the owner of the property where the tank system is or was located. In the event the identity of the tank system owner and operator is unclear, unknown or in dispute, the rules state that the property owner is the owner of the tank.

Under the Texas Water Code, the owner of the property is ultimately responsible for contamination leaving the property or affecting groundwater if the tank owner or operator does not take responsibility. The TNRCC refers to the owner and operator of an LPST as a responsible party (RP); the RP is responsible for the environmental cleanup of the contaminants leaked from the tank system. The RP is required by the

TNRCC to address any contamination originating from his tank system (either on-site or off-site) to achieve cleanup levels set forth by the TNRCC.

If a party purchases an existing LPST site, the purchaser will not automatically become the RP for the site unless he willingly accepts that responsibility. However, should the previous owner of the tanks become insolvent, disappear, etc., the purchaser of the property could become responsible for the cleanup due to the fact that he is the current owner of the property. The current owner of the property could then become eligible for reimbursement of certain LPST cleanup costs from the Petroleum Storage Tank Remediation (PSTR) Fund provided that the site is eligible for the program. (For more information on the PSTR Fund and eligibility requirements, see TNRCC publications formerly numbered PST 92-07 and TWC-0230.)

Because of the large number of ongoing real estate transactions which involve LPST sites or properties possibly contaminated by an LPST site, TNRCC program staff are receiving numerous requests from parties involved in real estate transactions for a letter from the TNRCC stating that the purchaser will not be held liable for environmental cleanup of the LPST contamination. It is not the policy of the TNRCC to issue such letters because we often have insufficient information at the time of the request to support such a statement, and because ultimately the property buyer could become responsible if the RP does not fulfill his obligations.

Therefore, we suggest that interested parties hire a qualified environmental consultant and possibly an attorney to evaluate existing information, including PST public records, relating to LPST sites of interest in order to render an opinion regarding the ramifica-

tions of the presence of an LPST site with respect to the pending real estate transaction. To inspect information contained within LPST case files, please provide a written request which references the appropriate **LPST ID Number** to: Texas Natural Resource Conservation Commission, Record Systems Department, P.O. Box 13087, Austin, Texas 78711-3087. A list of existing LPST sites can also be obtained from the Record Systems Department or Data Processing Services at the same address.

LPST case coordination by TNRCC program staff is prioritized based upon the threat individual cases pose

to public health and safety, and the environment. Therefore, no special consideration is given to coordination of LPST cases involved in real estate transactions. The PST program in no way prevents the sale of any LPST site. Therefore, real estate transactions should be able to proceed independently from the coordination of the LPST site cleanup by TNRCC program staff. Parties may choose to minimize delays in real estate transactions by not insisting on the final closure of the LPST site by the TNRCC prior to the property sale, and addressing this issue in the negotiated price or establishing responsibility by contract, letter of credit, bond or insurance.



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On September 1, 1993, the Texas Water Commission and the Texas Air Control Board merged to form the Texas Natural Resource Conservation Commission (TNRCC).

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